

FISHERIES ACT, 1897

4 of 1897

[4th February, 1897]

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STATEMENT OF OBJECTS AND REASONS 'The subject of legislating for the protection of freshwater fishes was opened with an inquiry made so long ago as 1869 by Dr. F. Day, of the Madras Medical Service, who had been placed on special duty for that purpose. This was followed by a resolution issued in October, 1871 on Dr. Day's report for the North-Western Provinces, in which he recommended a Fisheries Act. Dr. Day's recommendations as well as the action taken or proposals made up to 1888 by the various Local Governments, were summarised in a note prepared for the Agricultural Conference held at Delhi in that year. Briefly, the action taken by the several provinces was as follows: In 1875 a Fisheries Act was passed for British (now lower) Burma. In 1880 the Punjab Government submitted a draft Act and Rules. In 1881 the Bombay Government submitted a Bill for the preservation of game and fish. In 1883, the Government of Madras submitted a draft Fishery Bill. In 1889 the North-Western Provinces Government submitted recommendations made by the Commissioner of Kumaon for preserving fish in the hills. The conference at Delhi was unanimous in making the following five recommendations: (1) The prevention of dynamite and other explosives being used for the destruction of

fish: (2) The prevention of poisoning waters: (3) The enforcement of fish ladders on weirs and other works in rivers of any size. ten yards width being suggested as a minimum; (4) The regulation of fixed obstructions and engines in such rivers; (5) The protection of stock-pools. The members of the Conference differed as to the expediency of (a) regulating the size of the mesh of nets; (h) prohibiting or regulating the haling out rivers and streams for the purpose of catching fish; and (c) conferring on the Government power to assume control of the right to fish in the waters or rivers of a province. The proceedings of the Conference were circulated and the opinions of Local Governments obtained. The disposal of the case was still, however, deferred pending a reply from Madras. In the meantime the Bengal Government had passed an Act, 2 of 1889, for the prevention of poaching in private waters. In the opinion of the Government of India the importance of maintaining to the fullest extent compatible with private interests one of the most considerable food-supplies of the country is so great as to justify legislation. Although this has been long recognised, and although the question has now been under consideration for upwards of twenty years, little advance has yet been made owing to the natural and proper hesitation of Local Governments to take any measures which are at all likely to interfere with private rights. It may be that this reluctance to take positive action for the protection of fish in waters in which private interests are concerned is due not so much to an assurance that legislative restriction will entail injurious consequences to individuals as to doubts regarding the character of the consequences; but it is not now proposed to interfere in any way with private rights. What is proposed in the way of immediate action is to forbid certain practices which are undoubtedly injurious, and to empower Local Governments to take under management some selected streams or head-waters belonging to the State and other selected streams and waters with the consent of the owners thereof or persons interested therein. It is thought that this will afford practical experience as to the measures most essential to insure the desired results. At present it is not proposed to do more in regard to private waters than to extend provisions of Bengal Act, 1889 (an Act for the protection of the right of fishing in private waters) so as to cover all private fisheries throughout the country. There are two points on which definite conclusions can be at once formed: the first is that the use of dynamite and poisoning which are overt acts more or less easily repressible. should, in view of the wanton and useless destruction

of food caused thereby, be universally forbidden. The second point is that other restrictions are either not needed or are impossible on the larger rivers which are, on the one hand, as Dr. Day indicated, naturally protected the heavy floods in the rainy season, when most of the important fish spawn and, on the other hand, are beyond the control of river police. These considerations generally confined the issue involved to the question of enforcing further restrictions for the preservation of fish in the smaller rivers. The objects of the legislation now proposed are--- (1) to prohibit the use of dynamite and poison in all waters within British jurisdiction, the prohibition with respect to dynamite extending to territorial waters; (2) to make the provisions of the Bengal Private Fisheries Protection Act, 1889, of general application; (3) to empower each Local Government, with the previous sanction of the Government of India, to make rules for the undermentioned purposes, and to apply them to any selected streams or other waters which are the property of the State, or to any other streams or waters with the consent of the persons owning them or interested therein :--- (a) the prohibition or regulation of (i) the use of fixed engines for the capture of fish and (ii) the construction of weirs; (b) the prohibition or regulation of the use of nets with a mesh below a minimum size; (c) the prohibition or regulation of the capture or sale of all or any kinds of fish during any close season; and (d) the total closure of any water for a period not exceeding two years. (4) to provide suitable penalties for breaches of the proposed law and of the rules thereunder; and (5) to confer on persons specially empowered in this behalf by the Local Government power to arrest without warrant for offences against such law or rules." -Gaz. of Ind.. 1893, Pt. V, p. 101.

1. Title and extent :-

(1) This Act may be called The India Fisheries Act, 1897.

(2) It extends to the whole of Indian except ¹[the territories which immediately before the 1st November, 1956, were comprised within Part B States] ²[* * *], ³[*], ³ [* * * *]

1. Substituted for "Part B States", by 2 A.L.O., 1956.

2. Words "except Burma" were omitted by A.O., 1937.

3. Words "and" at the end of sub-section (2), and sub-section (3) were omitted by the Repealing and amending Act, 1914 (10 of 1914), S. 3 and Sch. II.

2. Act to be read as supplemental to other fisheries Laws :-

Subject to the provisions of section 8 and section 10 of General Clauses Act, 1887, this Act shall be read as supplemental to any other enactment ¹for the time being in force relating to fisheries ²[in] ³[the territories to -which this Act extends] ⁴ [* * *].

1. For law relating to Fisheries in --- (1) Andaman and Nicobar Islands, see Andaman and Nicobar Islands Fisheries Regulation, 1938 (Regn. I of 1938); (2) Assam, see the Assam-Land and Revenue Regulation, 1886 (I of 1886), sections 16 and 155; (3) Bengal and Assam (Private Fisheries), see the Private Fisheries Protection Act, 1889 (2 of 1889); (4) Jammu and Kashmir, see Jammu and Kashmir State Fisheries Act (Smtv. 1960); (5) Kerala- See Travancore- Cochin Fisheries Act, 1950 (T.-C. Act 34 of 1950.); (6) Madhya Pradesh see M.P. Fishereis Act, 1948 (C. P. and B. Act 3 of 1948); (7) Maharashtra- See Maharashtra Fisheries Act, 1961 (Maha. Act I of 1961); (8) Nilgiris District, as to acclimated fish, see the Nilgiris Game and fish Preservation Act, 1879 (T. N. Act 2 of 1879); (9) Punjab- See Punjab Fisheries Act, 1914 (Punj. Act 2 of 1914); (10) Rajasthan- See Rajasthan Fisheries Act, 1953 (Raj. Act 16 of 1953); (11) Uttar Pradesh - See U.P. Fisheries Act, 1948 (U.P. Act 45 of 1948); (12) West Bengal "- See West Bengal Agricultural Lands and Fisheries (Acquisition and Resettlement) Act, 1958 (W.B. Act 13 of 1958).

2. Substituted for "in any part of the Provinces" by A.L.O., 1950

3. Substituted for "a Part A State or a Part B State", by 2 A.L.O., 1956.

4. Words "except Burma" were omitted by A.O., 1937.

3. Definitions :-

In this Act, unless there is anything repugnant in the subject or context---

(1) "fish" includes shell-fish;

(2) "fixed engine" means any net, cage, trap or other contrivance for taking fish, fixed in the soil or made stationary in any other way; and

(3) "private water" means water which is the exclusive property of any person or in which any person has for the time being an exclusive right of fishery whether as owner, lessee or in any other capacity.

Explanation.--- Water shall not cease to be "private water" within the meaning of this definition by reason only that other persons may have by custom a right of fishery therein.

4. Destruction of fish by explosives in inland waters and on

coasts :-

(1) If any person uses any dynamite or other explosive substance in any water with intent thereby to catch or destroy any of the fish that may be therein, he shall be punishable with imprisonment for a term which may extend to two months, or with fine which may extend to two hundred rupees.

(2) In sub-section (1), the word "water" includes the sea within a distance of one marine league of the sea-coast, and an offence committed under that sub-section in such sea may be tried, punished and in all respects dealt with as if it had been committed on the land abutting on such coast..

5. Destruction of fish by poisoning waters :-

(1) If any person puts any poison, lime or noxious material into any water with intent thereby to catch or destroy any fish, he shall be punishable with imprisonment for a term which -may extend to two months, or with fine which may extend to two hundred rupees.

(2) The ¹ [State] Government may, by notification in the Official Gazette, suspend the operation of this section in any specified area, and may in like manner modify, or cancel any such notification.

1. Substituted for the word 'Provincial' by A.L.O., 1950.

6. Protection offish in selected waters by rules of State Government :-

(1) The ¹[State] Government may make rules for the purposes hereinafter in this section mentioned, and may by notification in the Official Gazette apply all or any of such rules²to such waters, not being private waters, as the ¹[State] Government may specify in the said notification.

(2) The ¹[State] Government may also, by like notification, apply such rules or any of them to any private water with the consent in writing of the owner thereof and- of all persons having for the time being any exclusive right of fishery therein.

(3) Such rules may prohibit or regulate all or any of the following matter, that is to say,---

(a) the erection and use of fixed engines.

(b) the construction of weirs, and

(c) the dimension and kind of the nets to be used and the modes of using them.

(4) Such rules may also prohibit all fishing in any specified water for a period not exceeding two years.

(5) In making any rule under this section the ¹ [State] Government may,-"

(a) direct that a breach of it shall be punishable with fine which may extend to one hundred rupees, and, when the breach is a continuing breach, with a further fine which may extend to ten rupees for every day after the date of the first conviction during which the breach is proved to have been persisted in; and

(b) provide for

(i) the seizure, forfeiture and removal of fixed engines, erected or used or nets used, in contravention of the rule and

(ii) the forfeiture of any fish taken by means of any such fixed engine or net.

(6) The power to make rules under this section is subject to the condition that they shall be made after previous publication.

1. Substituted for -Provincial" by A.L.O., 1950.

2. Some of the rules are: (1) Fishing in Waters of Tungabhadra Reservoir Rules-See Mysore Gazette, 11-1-1962. Pt.IV. Sec. 2-C (i) p. 10. (2) Mysore Fisheries (Prohibition of Fishing) Rules, 1963- See Mysore Gazette, 1-S-196.1, Pt. [V, Sec.2-C (ii). p.2008. (3) Goa, Daman and Diu Aid to Fisheries Rules, 1963- See Goa Gazette. 5-9-1963, Sr. 1. p 304. (4) Prohibition of Fishing in Conserved Waters, 1963 (T.N.) - See Fort. St. Geo. Gaz., 14-12-1966, Pt. V, p 1192. (5) Punjab Fisheries Rules, 1966-See Punjab Gaz., 5-8-1966, Pt.III, L.S., P. 639. (6) Pondicherry Fisheries Rules, 1966- See Pondi. Oaz., 20-9-1966, p. 90 (7) Tripura Fisheries Rules, 1978-See Tripura Gaz., 9-9-1978, Pt. I, p. 333. (8) T. N. Inland Fisheries. Lease and License Rules, 1972- T.N. Gaz., 19-7-72, Pt. V. Suppl. No. 28A.

7. Arrest without warrant for offences under this Act :-

(1) Any police officer or other person ¹ specially empowered by the ² [State] Government in this behalf, either by name or as holding any office for the time being, may, without an order from a Magistrate and without warrant, arrest any person committing in his view any offence punishable under section 4 or section 5 or

under any rule under section 6 ---

(a) if the name and address of the person are unknown to him, and

(b) if the person declines to give his name and address, or if there is reason to doubt the accuracy of the name and address if given.

(2) A person arrested under this section may be detained until his name and address have been correctly ascertained: Provided that no person so arrested shall be detained longer than may be necessary for bringing him before a Magistrate, except under the order of a Magistrate for his detention

1. For notification under this section in Tamil Nadu, see Fort St. George Gazette, 1903, Pt. I, page.19.

2. Substituted for "Provincial" by A.L.O., 1950.